

PHILIP J. DINHOFER, LLC

ATTORNEYS AT LAW
77 N. CENTRE AVE. - SUITE 314
ROCKVILLE CENTRE, NY 11570
TEL: 516-678-3500
FAX: 516-678-4235
E-MAIL: PJDLLC2806@YAHOO.COM

July 23, 2025

VIA ECF

Hon. Edgardo Ramos
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Suarez v. LIRR, et al.
22 Civ. 9013 (ER)

Dear Judge Ramos:

MEMO ENDORSED

The Court directs Defendant to respond.

SO ORDERED.



Edgardo Ramos, U.S.D.J.

Dated: July 23, 2025

New York, New York

Plaintiff Suarez does herewith move the Court for an Order compelling the deposition of Mr. Able Guzman on the terms set forth below, or as modified by the Court.

As the Court may recall from our last conference and Docket Entries #48 & #48-1, on June 5, 2025 plaintiff served the person whom defendant D & C United identified as the driver of their subject vehicle, Mr. Abel Guzman, with a deposition subpoena for a proceeding that was to be conducted yesterday, on July 22, 2025. Despite being served with the subpoena some six weeks ago at the same address where he was served with the summons and complaint in the related State action (Exhibit 1, affidavit of service), which address we know to be appropriate given that said prior service generated Mr. Guzman's Answer in the State action (by no strange coincidence interposed by the same attorney, Mr. Harms, who represents the defendant vehicle owner, D & C United, and their insurance carrier, Exhibit 2), Mr. Guzman failed to appear for yesterday's deposition. Nor has Mr. Guzman interposed any objection to the Subpoena (Dk #48) that was properly served upon him per Docket #48-1, and his time to do so has now expired.

I am constrained to remind the Court that this Subpoena process was voluntarily suggested by me at our last conference of May 30, 2025, as an expedient remedy to Mr. Guzman's failure to appear on April 8, 2025 pursuant to the notice of deposition served upon his attorney, Mr. Harms, who had initially agreed to produce Mr. Guzman and then subsequently sophomorically claimed he had no "control" over Mr. Guzman, all the while failing to disclose before you during his prolific presentation that he actually represented Mr. Guzman in the related State action.

Plaintiff is trying in good faith to secure the deposition of the hit and run driver of the subject vehicle that rear ended plaintiff's vehicle and then fled the accident scene, a necessary witness, first by notice and then second by Subpoena, both without success. Our next remedy, before seeking a contempt order and Mr. Guzman's arrest/detention by the Court so that he may be deposed, is to obtain your Order compelling Mr. Guzman's deposition by Stenographer and/or Video, on September 11, 2025 at 10:00 AM at the offices of Lexitas Reporting, 100 Merrick Road, Suite #320W, Rockville Centre, NY, 11570.

Hon. Edgardo Ramos
July 23, 2025

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[See e.g.: Daval Steel Products, a Div. of Francosteel Corp. v. M/V Fakredine, 951 F.2d 1357, at headnotes 4, 5 (2nd Cir. 1991)(Due process requires that in the instance of an attorney issued Subpoena, an Order from the Court must also be issued before contempt & sanctions may be imposed)]. Per Daval, the Second Circuit has indicated that your Order should provide Mr. Guzman with fair notice that his failure to appear at this deposition will result in his arrest/detention by the Court so that he may be deposed and additionally the imposition of sanctions, including *inter alia*, that of contempt against him as well. Since Mr. Guzman and defendant D & C are both represented by the same attorney and both are protected under the same policy of insurance and therefore both stand *in para materia* for liability purposes, we respectfully request that the Court's order additionally put an end to the gamesmanship had herein that has already twice burdened the Court and four other law offices with such puerile frivolity, and thereby add to its Order a stern warning to defendant D & C of the imposition of similar sanctions, including *inter alia*, the striking of their pleadings should Mr. Guzman fail to comply with the Court's directive to appear for deposition on September 11, 2025.

Since the Court already has jurisdiction over Mr. Guzman by reason of the prior service of a Subpoena, in addition to the service that will occur by reason of the ECF delivery to Mr. Guzman's *de facto* attorney, upon receipt of the Court's Order directing the deposition sought herein, as per the foregoing and Daval, I will additionally arrange for the trackable overnight delivery of a copy to him at the address where he has twice before been successfully served, which is the address provided to me by his attorney, Mr. Harms.

Respectfully yours,

Philip J. Dinhofer

PHILIP J. DINHOFER

PJD/dd

Encs:

cc: Andrew Harms, Esq.
Garrett Rooney, Esq.
Jacob Goins, Esq.
Fredric M. Gold, Esq.
(All Via ECF)

Form 2 - AFFIDAVIT OF SERVICE



P21935970

PHILIP J. DINHOFER, LLC Philip J. Dinhofer
SUPREME COURT BRONX COUNTY STATE OF NEW YORK

GREGORY SUAREZ, ETAL

PLAINTIFF

- vs -

ABEL GUZMAN

DEFENDANT

STATE OF NEW YORK, COUNTY OF NEW YORK

:SS:

JUAN POLANCO being duly sworn, deposes and says; I am over 18 years of age, not a party to this action, and reside in the State of New York. That on the **28TH** day of **JUNE 2024**, **12:44PM** at
1119 WASHINGTON AVENUE
BRONX NY 10456

I served the **DEMAND FOR JURY TRIAL, SUMMONS AND VERIFIED COMPLAINT, VERIFICATION** upon **ABEL GUZMAN, the DEFENDANT**, therein named by delivering and leaving a true copy or copies of the aforementioned documents with **Marcelina Guzman, MOTHER**, a person of suitable age and discretion.

Deponent describes the person served as aforesaid to the best of deponent's ability at the time and circumstances of the service as follows:

SEX: **FEMALE** COLOR: **BROWN** HAIR: **GREY**

APP.AGE: **60** APP. HT: **5ft5in** APP. WT: **175**

OTHER IDENTIFYING FEATURES

On **07/01/2024** I deposited in the United States mail another true copy of the aforementioned documents properly enclosed and sealed in a post-paid wrapper addressed to the said **DEFENDANT** at the above address. That being upon information and belief, the usual place of abode, last known residence of the **DEFENDANT**.

Copy mailed 1st class mail marked personal and confidential not indicating on the outside thereof by return address or otherwise that said notice is from an attorney or concerns an action against the person to be served.

COMMENTS:

That at the time of service, as aforesaid, I asked the **person spoken to** whether the **DEFENDANT** was in the military service of the United States Government, or of the State of New York, and received a negative reply. Upon information and belief based upon the conversation and observation as aforesaid I aver that the **DEFENDANT** is not in the military service, and is not dependent on anyone in the military service of the United States Government or the State of New York, as that term is defined in statutes of the State of New York, or of the Federal Soldiers and Sailors Civilian Relief Act.

Sworn to before me this
01ST day of JULY, 2024

SELENA INES ADAMES
Notary Public, State of New York
No. 01AD6365042
Qualified in QUEENS COUNTY
Commission Expires 09/25/2025

JUAN POLANCO 2031534
Lexitas
1235 BROADWAY 2ND FLOOR
NEW YORK, NY 10001
Reference No: 3-PJDLLC-21935970
2a

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X Index No.: 809253/2024E
GREGORY SUAREZ and JULISSA SUAREZ,

Plaintiff(s)
-against-

VERIFIED ANSWER

ABEL GUZMAN,
Defendant.

-----X

Defendant, ABEL GUZMAN, by his attorneys, LEWIS BRISBOIS BISGAARD & SMITH, LLP, as and for their Verified Answer to Verified Complaint, upon information and belief, alleges:

AS AND FOR A ANSWER TO THE FIRST CAUSE OF ACTION

1. Defendant denies each and every allegation contained in paragraphs "1", "2", "3", "7", "8", "9", "10", "11", "12", "14", of the Verified Complaint.
2. Defendant denies each and every allegation contained in paragraphs "4", and "13", of the Verified Complaint and respectfully refers all questions of law and fact to this Honorable Court.
3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "5", and "6", of the Verified Complaint.

AS AND FOR A ANSWER TO THE FIRST CAUSE OF ACTION

4. Defendant repeats, reiterates and realleges each and every answer set forth herein in paragraphs "1" through "14" in response to paragraph "15" of the Verified Complaint.
5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the Verified Complaint.
6. Defendant denies each and every allegation contained in paragraphs "17", and "36", as well as to the WHEREFORE clause of the Verified Complaint.

142556165.1

Dated: New York, New York
July 18, 2024

Yours etc.,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

Andrew Harms

Andrew Harms

*Attorne*s or De~~endant~~

ABEL GUZMAN

77 Water Street, Suite 2100

New York, New York 10005

(212) 232-1300

Our File No.: 29881.452

To:

Philip J. Dinhofer

PHILIP J. DINHOFER, LLC.

Attorneys for Plaintiffs

GREGORY SUAREZ and JULISSA SUAREZ

77 N. Centre Avenue- Suite 314

Rockville Centre, New York 11570

(516) 678-3500

ATTORNEY VERIFICATION

STATE OF NEW YORK)
)
 ss:
COUNTY OF NEW YORK)

ANDREW D. HARMS, being duly sworn, deposes and says:

That I am a partner with the law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP, attorneys representing the Defendant, ABEL GUZMAN that I have read the attached VERIFIED ANSWER and the same is true to my own belief, except as to the matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge:

That deponent's source of information is a claims file containing reports and records of investigation, with which deponent is familiar;

That this Verification is made by deponent, because my clients do not reside within the county where the deponent maintains his office.

Dated: New York, New York
July 18, 2024

By: Andrew Harms
ANDREW D. HARMS

AFFIRMATION OF SERVICE

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

MACHELE SNIPES, being duly sworn, affirm, deposes and says that deponent is not a party to this action, is over 18 years of age and resides in Essex County, New Jersey;

that on the 18th day of July, 2024 deponent served the within document(s) entitled
VERIFIED ANSWER UPON:

Philip J. Dinhofer
PHILIP J. DINHOFER, LLC.
Attorneys for Plaintiffs
GREGORY SUAREZ and JULISSA SUAREZ
77 N. Centre Avenue- Suite 314
Rockville Centre, New York 11570
(516) 678-3500

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

Machele Snipes

MACHELE SNIPES

LEWIS BRISBOIS BISGAARD & SMITH LLP

Index No.: 809253/2024E

File No.: 29881.452

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

GREGORY SUAREZ and JULISSA SUAREZ,

Plaintiffs,

-against-

ABEL GUZMAN

Defendants.

VERIFIED ANSWER

LEWIS BRISBOIS BISGAARD & SMITH LLP

Counsel for Defendant D & C UNITED INC.

*Office Address & Tel. No.: 77 Water Street, 21ST Floor
New York, New York 10005
(212) 232-1300*

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Signature: _____

Print Signer's Name: _____

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for Defendant